

THE COMMONWEALTH OF MASSACHUSETTS
Public Employee Retirement Administration Commission
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M E M O R A N D U M

TO: All Retirement Boards

FROM: Joseph Connarton, Deputy Executive Director

RE: Early Intervention Plans

DATE: August 24, 1998

Chapter 252 of the Acts of 1998 recently made several changes to the existing law governing Early Intervention Plans, Chapter 32, Section 5B. Under these changes, the responsibility of the retirement board **is limited** to naming a designee of the board to the Early Intervention Team. This designee, who shall not be a member of the board, shall serve on a team assembled by the employer if such team is warranted under the provisions of Section 5B.

We would encourage boards to cooperate with the employer in naming a designee to participate in this review of injured members of the system. However, boards should **not** expend any further resources or funds for the organization, implementation or administration of these Plans.

A copy of Chapter 252 of the Acts of 1998 is attached for your perusal.

Chapter 252 of the Acts of 1998

AN ACT RELATIVE TO EARLY INTERVENTION PROGRAMS FOR INJURED PUBLIC EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 32 of the General Laws is hereby amended by striking out section 5B, as appearing in the 1996 Official Edition, and inserting in place thereof the following section:-

Section 5B. (a) Every employer in the commonwealth who employs persons who are members of a retirement system established pursuant to the provisions of this chapter shall establish, in consultation with appropriate officials of the governmental unit and representatives of the unions in the governmental unit, an early intervention plan. In the case of members of the teacher's retirement system, the appropriate official of the governmental unit shall be a designee of municipal or regional school committees. Said plan shall be designed to implement programs and procedures that will effectuate the delivery of a coordinated employee assistance program and procedures that will effectuate the delivery of a coordinated employee assistance program for injured members; to provide educational programs designed to encourage workplace safety; and to identify hazards for the employer's attention. The goal of the plan shall be to limit the retirement system's liability for disability benefits by ensuring the continued employment of injured members through medical and vocational rehabilitation, reasonable accommodation of injured workers, and a safer workplace.

(b) The early intervention plan shall be implemented whenever a member has been absent from work for 30 work days or more as the result of a work-related injury, if it is determined by a physician selected by the employee and a physician selected by the employer that the employee's return to work is not imminent; provided, however, that if the two physicians do not agree whether the return to work is imminent, said physicians shall select a third physician who shall make said determination. The physicians shall also determine, whether the member is a candidate for further review pursuant to the employer's early intervention plan. If further review is warranted, the employer shall proceed to assemble an early intervention team which shall consist of a designee of the retirement board who shall not be a member of the retirement board the employer's

personnel or human service director or workers compensation agent who shall serve as chair of the team, a representative of the members union or if the member is not represented by a union, a representative of the member's choosing, the members treating physician and a rehabilitation specialist designated by the team. The employer shall notify the retirement board whenever an early intervention team is assembled. Said team shall have access to records pertaining to the member's injury to determine the condition of the member. Any records obtained by the team shall be used for the sole purpose of making the determination required by this section and shall not be used for any other purpose relating to the member's employment. Such records shall be exempt from disclosure pursuant to clause Twenty-sixth of section 7 of chapter 4 and chapter 66. No member of the team shall disclose to who is not a member of the team any confidential medical information or other personal information about the member that has been supplied to the team under the provisions of this section. If the employer, upon recommendation of the early intervention team, determines that the member is likely to be unable to perform the essential duties of his job, it shall have the authority to require the member to undergo an assessment to determine whether he would benefit from a medical or vocational rehabilitation program. The determination by an employer as to whether a member is a candidate for further review pursuant to the early intervention plan, the scope of the review by the early intervention team, and the extent of any recommended vocational or rehabilitation program shall be limited to the member's injury which caused the appointment of the early intervention team. Every reasonable effort shall be made to make such determination in an expeditious manner and said determination shall not be arbitrary, capricious or unreasonable. If the member fails to participate in the assessment or required rehabilitation, he shall be deemed to have waived his rights to benefits pursuant to section 6 or 7.

(c) For purposes of designing the rehabilitation program, the early intervention team shall utilize resources available from the employer, the member's collective bargaining representative, the Massachusetts rehabilitation commission, the public employee retirement administration commission, and such other sources as it deems necessary. The early intervention plan shall be reasonable and shall not unduly burden the member with regard to travel and time requirements. The plan shall coordinate with and not duplicate services or treatments available to the employee under chapter 152 or section 100 of chapter 41.

(d) The early intervention team shall monitor the implementation of the rehabilitation plan and shall continue to monitor the member's progress until he is returned to work or is granted a disability retirement pursuant to section 6 or 7.

(e) The employer shall assume responsibility for all costs associated with the assessment and subsequent rehabilitation plan, less any amounts payable under insurance available to the employer or to the member. If the early intervention team determines that the member has failed without good cause to complete the rehabilitation plan designed by the early intervention team, the member shall be deemed to have waived his rights to benefits pursuant to section 7 in connection with the injury for which the rehabilitation was designed.

(f) If, following completion of a rehabilitation plan, the early intervention team determines that the member is able to perform the essential duties of the position in which the member was employed prior to his absence from work, the member shall be returned to work in his former position; provided, however, that nothing in this section shall interfere with said member's right to use sick leave or take other leaves of absence subject to the same terms and conditions applicable to employees who have not been subject to the requirements of this section; and provided further, that no information obtained by the board or the member's employer as a result of the early intervention process shall be admissible in support of any application for involuntary retirement pursuant to section 6 or 7.

SECTION 2. Subdivision (2) of section 8 of said chapter 32, as so appearing, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) If, within two years of the date that a member is retired under section 6 or 7, a regional medical panel determines that the retired member is able to perform the essential duties of the position from which he retired, if following the completion of a rehabilitation program required under subdivision (1), a regional medical panel so finds, the member shall be returned to such position and his disability retirement shall be revoked; provided, however, that if the retired member is able to perform the essential duties of a similar job within the same department for which he is qualified, as determined by the department of personnel administration, and such position is vacant, said member shall return to such position; provided, further, that if such position is not vacant, then the last person appointed to that rank or position will be reduced in rank or position and shall be placed at the top of the list to fill such rank or position for a two year period.

If, after two years of the date that a member is retired under section 6 or 7, the regional medical panel determines that the retired member is qualified for and able to perform the essential duties of the position from which he retired or a similar position within the same department, as determined by the personnel administrator, said member shall be returned

to said position, provided the position is vacant. If the position has been filled, the member shall be granted a preference for the next available position or similar position for which he is so qualified. When under the provisions of this section, no vacancy exists in the same or similar position he shall continue to receive such retirement allowance until such reinstatement takes place or as a result of the submission of earnings information under section 91A which may require his pension to be reduced or revoked.

SECTION 3. Section 20 of said chapter 32, as most recently amended by section 5 of chapter 3 of the acts of 1997, is hereby further amended by striking out, in line 690, the word "shall" and inserting in place thereof the following word:- may.

Approved August 7, 1998.